

**AGREEMENT
BETWEEN SANTA FE COUNTY AND
THE TURQUOISE TRAIL MASTER ASSOCIATION
FOR ACCEPTANCE AND CONVEYANCE OF
A WASTEWATER SYSTEM**

THIS AGREEMENT for the conveyance and acquisition of a wastewater system dated this 8th day of December, 2012, is made and entered into by and between **Santa Fe County**, a political subdivision of the State of New Mexico (hereinafter "County") and the **Turquoise Trail Master Association** (hereinafter "TTMA"), a New Mexico non-profit corporation.

RECITALS

A. WHEREAS, TTMA currently owns, operates, and maintains wastewater infrastructure, including a wastewater lift station, located within Santa Fe County that serves residents of Santa Fe County (hereinafter the "System"). The System is described on Exhibit A, attached hereto and incorporated herein;

B. WHEREAS, TTMA desires to irrevocably and permanently convey the System to the County and the County wishes to acquire the System and continue to operate, maintain and improve the System;

C. WHEREAS, the County has determined that the acceptance of ownership and maintenance of the System is in the public interest, and the acquisition and ownership would allow the County to expand its wastewater collection services to a larger area of County residents as more accurately indicated in Exhibit B, attached hereto and incorporated herein;

D. WHEREAS, the System is outside the City of Santa Fe Presumptive City Limits, as that term is defined in a Settlement Agreement and Mutual Release of Claims between the County and the City of Santa Fe dated May 19, 2008;

E. WHEREAS, pursuant to Final Orders issued in PUC Cases Nos. 2428 and 2588, the City of Santa Fe (hereinafter the "City") is required to provide water and sanitary sewer services to TTMA's customer the Thornburg Amended Master Plan Area, under certain terms and conditions set forth in those orders and stipulations and an Annexation Agreement dated November 4, 2003;

F. WHEREAS, the Thornburg Amended Master Plan Area currently receives water from the City and TTMA's System disposes of wastewater from the Thornburg property to the City's Sewer Treatment Plant, as set forth in the agreement between the City and TTMA dated September 9, 2004 and is pursuant to the September 15, 2003 agreement with the City and requires the City's consent to terminate;

G. WHEREAS, upon TTMA's conveyance to the County and the County's acceptance of the System, the City will continue to provide water to the Thornburg Master Plan Area until the County is able to provide water, and the County will receive wastewater from the Thornburg Amended Master Plan Area for disposal at the County's wastewater treatment facility.

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions set forth in this Agreement, the County and TTMA agree as follows:

AGREEMENT

Section I
The System

- A. TTMA owns, operates and maintains the System. The System is comprised of approximately 4,528 feet of 8" and 10" diameter gravity flow mains and 4" service connections; a wastewater lift station equipped with pumps capable of conveying 417 GPM at 178 foot TDH; approximately 9,224 feet of 8" diameter PVC (C-900) wastewater force main; and all appurtenant easements all of which are described on Exhibit A attached hereto.
- B. The current and proposed extended service area of the System is described on Exhibit B attached hereto.

Section II
Acceptance and Conveyance of the System

- A. Conditions precedent to the County's acceptance of the System.

The County shall accept ownership and title to the System and assume the duties set forth in this Agreement upon completion of all the following conditions:

- (i) County shall obtain the consent of the City to terminate the Agreement between the City and TTMA as described in "Exhibit B" to the Third Amended and Restated Declaration of Covenants and Restrictions for the Thornburg Amended Master Plan Area (Lift Station Only) (hereinafter the "Declaration") recorded June 5, 2009 wherein the parties provided for the maintenance and operation of the System, established a Reserve Fund for maintenance of the System, and provided for the City's provision of emergency repairs to the System.
- (ii) The termination of the Agreement referred to in paragraph (i) above shall provide for the release of the Reserve Fund to TTMA.
- (iii) Under the terms of the Declaration TTMA shall duly record its termination.

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- (iv) Completion of a written agreement on terms acceptable to the County between the County and City confirming the City's continuing commitment to provide water and wastewater services to the Thornburg Master Plan Area until such time that the County completes the necessary construction of infrastructure to begin transferring wastewater to the County's wastewater treatment facility.
- (v) Within 120 days of the execution of this Agreement, the County shall complete a field inspection of all components of the System including the lift station to account for any deficiencies that may exist and completion of any items on a punch list. Once the County has completed the punch list, and it is acknowledged by both parties, it is at the County's discretion to decide whether or not to accept the System as is, which decision to accept shall not be unreasonably withheld, and which must be conveyed in writing to TTMA within 60 days following completion of the punch list. The County shall provide the punch list to TTMA. TTMA has the option, but not the obligation to cure such deficiencies to the satisfaction of the County. Within 60 days of the County's decision to accept the System under this Paragraph, the parties shall formally close this transaction by the giving of a Special Warranty Deed and a general bill of sale for any personal property.

B. TTMA's Conveyance of the System.

In consideration of the County's agreement to accept, own, operate, and maintain the System to provide wastewater services to all current and future customers in the County's service area, TTMA agrees to irrevocably and permanently convey the following to the County, provided that such items are in TTMA's possession or can be reasonably obtained:

- (i) The System including all components and related infrastructure and all current customers who are connected to the System and to whom wastewater services are provided by the System;
- (ii) All existing easements for the System and associated pipes and infrastructure which constitute the System, including easements for installation, replacement, repair and maintenance of gravity feed flow lines and other elements of the System;
- (iii) All records and documentation related to the operation, maintenance and repair of the System;
- (iv) All plats, easement descriptions, and other pertinent records related to real property affected by this Agreement;
- (v) Any and all record drawings ("as built"), certified by a New Mexico licensed engineer and any existing test results related to the installation of all

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components of the System, including any televised inspections of the lines and associated logs, pressure test results, and soil compaction test results; and

- (vi) All billing records for current customers connected to the System including names and addresses with indication of the status of the accounts.
- C. TTMA agrees to provide the County with any and all written agreements between TTMA and the City as well as any and all written agreements between TTMA and owners of real property abutting the service area of TTMA's customers currently being served by the System.
- D. Prior to the conveyance of the System to the County, TTMA agrees to provide the County personnel with a minimum three-hour training session and site visit which shall be guided by knowledgeable and experienced individuals who are operating and maintaining the System for TTMA.

Section III
Guarantee of Availability and Capacity

The County agrees to guarantee the availability of the wastewater capacities specified in the September 9, 2004 and September 15, 2003 agreements with the City to all landowners in the Amended Thornburg Master Development Plan area which is defined as "Tract 1-A, Tract 2-A, Tract 3, Tract B1-A, Tract B1-B, B-2, Tract B-3, Tract B-4, Tract C, Tract 3-A, and Tract 4-A" recorded as Instrument #1362150 on January 10, 2005, at Book 577 Page 36-42, and any boundary adjustment lot created therefrom, regardless of when full use and/or build-out occurs.

Section IV
Bisbee Court

A. Service to Bisbee Court.

The development area known as Bisbee Court is currently shown to be within the potential service area indicated in Exhibit B. Residents of Bisbee Court are currently served by a private wastewater collection and treatment system that is not connected to the TTMA System. In the future, water customers in Bisbee Court will be eligible to connect to the System once the System is owned and operated by the County, however the cost associated with such connection shall be borne solely by the Bisbee Court's Homeowners' Association, and the County shall not assume any financial obligation associated with installing the connection to Bisbee Court. Once a design to connect Bisbee Court's wastewater infrastructure to the System is completed to the satisfaction of the County, the existing and new gravity sanitary

sewers shall also be conveyed to the County upon the County's acceptance of ownership, operation and maintenance.

Section V
Representations and Warranties

- A. TTMA hereby represents and warrants to the County that the following statements are true and correct as of the date of this Agreement, and the truth and accuracy of such statements shall be a material condition for County's acceptance and performance of the County's obligations under this Agreement:
- (i) TTMA is legally authorized to enter into, and to take or cause to be taken the actions and activities contemplated pursuant to this Agreement, including, without limitation: (a) causing the System to be constructed and operated on the property described on Exhibit A, (b) conveying to the County clear title in fee to the System, (c) granting easements, as described herein, and (d) providing the surety to the County as described herein.
 - (ii) TTMA is the owner in fee of the System, and there are no liens or mortgages against the System including its associated infrastructure and components and TTMA is conveying fee title without encumbrance or liens to the County.
 - (iii) The signatory to this Agreement is an officer of TTMA and is duly authorized to execute this Agreement and bind TTMA to its terms.
 - (iv) This Agreement has been authorized by all necessary action on the part of TTMA.
 - (v) There are no outstanding debts, obligations, liabilities or liens on or related to the System or related to any aspect of the System.
 - (vi) TTMA is not in breach or violation of any of TTMA's corporate charter, articles of incorporation, bylaws, other governing documents or other agreements to which it is a party.
 - (vii) TTMA's execution, delivery and performance of duties and obligations under this Agreement will not result in a breach or violation of TTMA's corporate charter, articles of incorporation, bylaws, other governing documents, or other agreements to which it is a party or otherwise bound, nor does TTMA's execution of this Agreement constitute a violation of any law, rule or any court order or decree applicable to TTMA, or result in the acceleration of any lien or encumbrance upon the System or the System's components or equipment.

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- (viii) This Agreement is the legal, valid and binding obligation of TTMA, enforceable against TTMA in accordance with its terms and conditions.
 - (ix) There is no action, claim, litigation, proceeding or governmental investigation pending against TTMA or the System, or to TTMA's best knowledge, threatened against TTMA or the System, which might directly or indirectly have a material adverse effect upon any of the matters contemplated by this Agreement. As part of a mortgage foreclosure case against Longford, now known as Galway Construction, the Association has filed counterclaims and cross claims to enforce its lien for Association dues against Longford. However, there are no claims against the System in this case.
 - (x) TTMA has received no written or oral notice of any proposed or contemplated condemnation of the System or any part thereof, and TTMA has received no written or oral notice of the intent or desire of any governmental or public or private authority or public utility to appropriate or use the System or any part thereof.
 - (xi) To TTMA's actual knowledge: (a) the sites on which the System and its infrastructure are located have not at any time been used for the purpose of storing (except for the proper storage of diesel fuel for generator operation), manufacturing, releasing or dumping Hazardous Materials and there are no Hazardous Materials located at, on or under the real property on which the System and its infrastructure are located, except for normal quantities of Hazardous Materials utilized in connection with the normal maintenance and operation of the System in compliance with all Environmental Laws and so-called household hazardous materials utilized by residences; and (b) no underground storage tanks, pipelines or clarifiers are located on the System or its infrastructure, other than the lift station's wet well. As used herein, "Hazardous Materials" is defined as any hazardous or toxic substances, materials or wastes, defined or regulated as such in or under Environmental Law, including without limitation, asbestos, gasoline and any other petroleum products, polychlorinated biphenyls and urea formaldehyde insulation. As used herein "Environmental Laws" shall mean any and all federal, state, local or municipal laws, rules, orders, decrees or requirements of any governmental authority or requirements of law (including common law) relating to or imposing liability or standards of conduct concerning the protection of human health, the environment or natural resources, or the release or threatened release of Hazardous Materials into the environment.
- B. The County hereby represents and warrants to TTMA that the following statements are true and correct as of the date of this Agreement, and the truth and accuracy of such statements shall be a material condition for the performance of TTMA's

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obligations under this Agreement:

- (i) The County is a political subdivision of the State of New Mexico, and its Board of County Commissioners has authorized the County to enter into and perform its obligations under this Agreement.
- (ii) The execution and delivery of this Agreement and performance of the actions contemplated by this Agreement will not conflict with any agreement to which the County is bound, or result in any breach or violation of any law, rule, regulation or any court order or decree applicable to the County.

Section VI
Indemnification of County by TTMA

- A. TTMA shall indemnify and hold the County harmless from any obligation, cost, expense, liability or claim by any third party against the County arising from or in any way connected with TTMA acts or omissions in statements made above in connection with the System. The indemnity period commences with formal closing of this transaction and ends two (2) years later.
- B. In connection with Hazardous Materials, as defined herein, TTMA shall indemnify and hold harmless the County, its employees, agents and representatives from and against any and all loss, damage, claim or damage, liability or expense, including costs and all attorneys' fees actually incurred, arising out of or in connection with any injury or damage or claim of injury, including death, or damage of any kind whatsoever, to persons or property (unless and only to the extent caused by the County, its employees or agents), fines, penalties, sanctions or costs occasioned in or about the System, existing on the System site or arising out of the use of the System site on or before date of this Agreement, whether known or unknown to TTMA or the County, to the extent that such losses arise from the existence of Hazardous Materials on the System site.

Section VII
Miscellaneous

- A. Notices. All notices, certificates or other communications made pursuant to this Agreement shall be made as follows:

- (i) To the County:

Santa Fe County
Attention: County Manager
102 Grant Avenue
Santa Fe, New Mexico 87501

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(ii) To TTMA:

President
Turquoise Trail Master Association, Inc.
Post Office Box 4156
Santa Fe, New Mexico 87502

B. Assignment. This Agreement shall not be assigned without the express written consent of the non-assigning party.


C. Integrated Agreement. This Agreement constitutes the entire agreement of the County and TTMA with respect to the subject matter of this Agreement and supersedes all prior oral and written communications with respect to such subject matter.

D. Applicable Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico, and venue shall be in Santa Fe County, New Mexico.

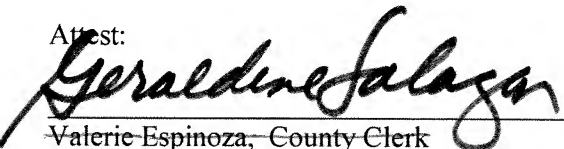
E. Severability. In the event that any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date written above.

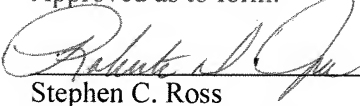
SANTA FE COUNTY

 Date: 12/31/12
Liz Stefanics, Chair
Santa Fe County Board of County Commissioners

Attest:

 Date: 1/4/13
~~Valerie Espinoza, County Clerk~~
Geraldine Salazar, County Clerk

Approved as to form:

 Date: 11/7/12
Stephen C. Ross
Santa Fe County Attorney

Santa Fe County Finance Department

Teresa C. Martinez
Teresa C. Martinez, Finance Director

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Date: 11/15/2012

TURQUOISE TRAIL MASTER ASSOCIATION

A New Mexico nonprofit corporation

By Bruce Golden
Bruce Golden, President

Date: 12/10/2012

Exhibit "A" – System Description*

1. Lift Station: Lift station includes two FLYGT CP3201 SH 423 Submersible pumps, with cast iron discharge connection, a 50 hp motor, 460vac/3/60, 1760 RPM, and 50' electrical cable. Each pump is capable of delivering 412 GPM at 171ft TDH. Lift station pump controls, Mechanical, Power distribution, Soft stop, Overload heaters, Control transformers, Level Controls, Alarm system, and Emergency generator. The lift station is 24' x 12' and is enclosed with a 6' x 8" stacked block wall, that is also enclosed by a 30' x 57' Steel fence.

2. 10" PVC Sanitary Sewer (12' – 16' Deep) – 676 LF

3. 10" PVC Sanitary Sewer in 22" Casing – 170 LF

4. 8" PVC Sanitary Sewer (8' – 12' Deep) – 1,818 LF

5. 8" PVC Sanitary Sewer (12' – 16' Deep) – 1,618 LF

6. 8" PVC Sanitary Sewer (16' – 20' Deep) – 319 LF

7. 4' Diameter Manhole (0' – 8') – 19 EA

8. 20" Bore and Case (8" Gravity Sanitary Sewer) – 234 LF

9. 8" PVC Sanitary Sewer in 20" Casing – 234 LF

10. 8" Force Main PVC, C-900 – 9,224 LF

11. 3" Air Release Valve – 4 EA

12. 8" Valve on Force Main with No Cleanouts – 1 EA

13. 8" Valve on Force Main with 2 Cleanouts – 5 EA

14. Easements: 2 easements

* All linear footages are approximate.

